FILE COPY

SUPREME COURT, U.S.
FILED
MAY 9 1960
JAMES R. BROWNING, Clerk

IN THE

# Supreme Court of the United States

October Term, 1959

No. [redacted] 925

H. J. WILSON,

*Petitioner,*

*vs.*

CHARLES HENRY BEVILLE, *et al.*,

*Defendants;*

THE CITY OF LOS ANGELES, a municipal corporation,

*Defendant and Respondent.*

**Petition for Writ of Certiorari to the District Court of Appeal of the State of Calfornia, Second Appellate District, Division One.**

ROBERT J. McGOWAN,
14434 Hamlin Street,
Van Nuys, California,
*Attorney for Petitioner.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

## SUBJECT INDEX


| | PAGE |
|---|---|
| Opinion below | 2 |
| Jurisdiction | 2 |
| Questions presented | 3 |
| Constitutional provisions and statutes involved | 4 |
| Statement of the case | 5 |
| Argument | 9 |
| Conclusion | 13 |
| Opinion of the District Court of Appeal | App. p. 1 |

## TABLE OF AUTHORITIES CITED


| CASES | PAGE |
|---|---|
| Aaron v. Cooper, 358 U. S. 1, 78 S. Ct. 1401 | 9 |
| Brown v. Board of Education, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 | 9 |
| Chicago, Burlington & Quincy R.R. Co. v. Chicago, 166 U. S. 226 | 2, 9 |
| Elbert, Ltd. v. Gross, 41 Cal. 2d 322 | 6 |
| Lake Merced Water Co. v. Cowles, 31 Cal. 315 | 12 |
| Municipal Securities Corp. v. Kansas City, 195 Mo. App. 464 | 13 |
| Peckwith v. Lavezolla, 50 Cal. App. 2d 211 | 12 |
| Shelley v. Kraemer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 | 2 |
| St. Louis v. Beck, 33 Mo. 1118, 63 S. W. 2d 814 | 13 |
| Terry v. Adams, 345 U. S. 461 | 2 |
| Wilson v. Beville, 47 Cal. 2d 852 | 7, 12, 13 |
| Wilson v. Beville, 175 A. C. A. 531 | 2, 8, 12 |

| STATUTES | |
|---|---|
| California Streets and Highways Code, Sec. 6555 | 4, 5, 8, 10, 11, 12 |
| California Streets and Highways Code, Sec. 6571 | 4, 5, 6, 8, 10, 12 |
| United States Code, Title 28, Sec. 1257 | 2 |
| United States Constitution, Fourteenth Amendment | 8 |
| United States Constitution, Fourteenth Amendment, Sec. 1 | 4 |

IN THE

# Supreme Court of the United States

October Term, 1959

No. .....

H. J. WILSON,

*Petitioner,*

*vs.*

CHARLES HENRY BEVILLE, *et al.*,

*Defendants,*

THE CITY OF LOS ANGELES, a municipal corporation,

*Defendant and Respondent.*

**Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District, Division One.**

*To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioner, H. J. Wilson, respectfully prays for a Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District, Division 1, in order to review its judgment affirming the judgment of the Superior Court of the State of California, in and for the County of Los Angeles, wherein a petition for hearing in the Supreme Court of the State of California was denied January 20, 1960, and which judgment awarded petitioner a sum of money for property

taken by the City of Los Angeles but did not award said sum based on the value of said land nor for the use and occupancy of said land, but rather on the amount of a lien that had existed on the land.

## Opinion Below.

The opinion of the District Court of Appeal of the State of California is officially reported as *Wilson v. Beville,* 175 Advance California Appellate Reports (A. C. A.) 531, and is appended hereto on the part marked "Appendix".

## Jurisdiction.

1. Jurisdiction of this court is invoked under Title 28, United States Code, Section 1257, which provides, in part:

> "Final judgments or decrees rendered by the highest court of the State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * * *
>
> "(3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * *."

2. The following cases are believed to sustain the jurisdiction of this Court:

*Chicago, Burlington & Quincy R.R. Co. v. Chicago,* 166 U. S. 226;

*Shelley v. Kraemer,* 334 U. S. 1, 14, 68 S. Ct. 836, 92 L. Ed. 1161;

*Terry v. Adams,* 345 U. S. 461, 484.

3. The Supreme Court of the State of California is the highest Court of said State and it refused a hearing on this cause on January 20, 1960.

4. The judgment of which review is sought is a final judgment of the District Court of Appeal of the State of California, Second Appellate District, Division 1, filed and entered November 23, 1959.

5. The time to file the petition herein was extended by order of the Supreme Court of the United States on April 19, 1960, to May 9, 1960.

## Questions Presented.

1. May an incorporated city exercising State jurisdiction take property owned by petitioner under the doctrine of inverse condemnation, and then fail to compensate petitioner for the property taken?

2. May a State Statute which defines the extent of interest in land acquired by a treasurer's deed from a City Treasurer therein be totally ignored when the question of extent of interest conveyed thereby arises?

3. May a State, by judicial construction, change the vested property rights of individuals in property acquired by a City of the State under the doctrine of inverse condemnation?

4. May a State, acting through its judiciary, deny an individual whose property has been taken for public use, the right to a jury trial on the issue of compensation?

## Constitutional Provisions and Statutes Involved.

This appeal involves the following quoted section of the United States Constitution:

"AMENDMENT 14
(Adopted July 28, 1868)
Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

*Amendment 14, United States Constitution.*

In particular, this appeal involves the second sentence of Section 1 of the 14th Amendment to the United States Constitution.

The case also involves two State Statutes of the State of California, Streets and Highways Code Section 6555 and Section 6571. In particular, Section 6555 of the Streets and Highways Code of the State of California provides as follows:

"§6555. EVIDENTIARY EFFECT OF DEED: TITLE CONVEYED. The deed of the treasurer, when duly acknowledged or proved, is primary evidence of the regularity of all proceedings theretofore had, and conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of

the period for redemption, free of all encumbrances, except the lien for State, county and municipal taxes."

Section 6571 of the Streets and Highways Code of the State of California provides as follows:

"§6571. LIMITATION OF CONTEST PROCEEDINGS Any action, suit or proceeding attacking or contesting the validity of any deed issued under the provisions of this division, or the validity of the proceedings subsquent to the issuance of the certificate of sale, must be brought within six months after the issuance of the deed, and if the validity of the deed or of the proceedings is not contested within that six months' period, it shall not be thereafter contested or questioned in any action, suit or proceeding."

## Statement of the Case.

The petitioner herein, H. J. WILSON, is the grantee of real property acquired by his predecessor in interest, pursuant to a treasurer's deed from the Treasurer of the City of Los Angeles issued August 23, 1950.

Section 6555 of the Streets and Highways Code of the State of California, provides that the treasurer's deed conveys to the grantee the absolute title to the lands described in the deed.

Section 6571 of the Streets and Highways Code of the State of California, provides that if the treasurer's deed is not attacked by action, suit or proceeding within six months from date of issuance of the deed, the validity of the deed shall not thereafter be contested in any action, suit or proceeding.

Section 6571 of the Streets and Highways Code of the State of California, was construed in *Elbert, Ltd. v. Gross*, 41 Cal. 2d 322, to apply, whether the grantee of the treasurer's deed was plaintiff or defendant.

More than six months after issuance of the treasurer's deed to plaintiff's predecessor, plaintiff commenced an action to quiet title to the real property described in the deed against, among others, the City of Los Angeles, a Municipal Corporation of the State of California, which said City of Los Angeles was in possession of a portion of the petitioner's property, using same as a public street.

The City of Los Angeles, hereinafter referred to as "the City." filed an Answer, asserting, among other things:

1. That it had acquired an easement pursuant to a condemnation action concerning said property;

2. That it had acquired an easement by public user.

Thereafter, trial was had, and the trial court made findings, which among other things, included a finding that the lien of a street improvement bond that resulted in foreclosure and issuance of a treasurer's deed to petitioner's predecessor, attached on November 23, 1927; that the condemnation action filed by the City was filed November 25, 1927; that the holder of the lien of assessment bond was never made a party to the condemnation action; that the City had devoted the property to a public use since 1932 as a street, and from such findings the trial court concluded that the City had an easement by reason of the condemnation action, even though neither petitioner nor his predecessors were made parties to the condemnation action, and further, that the City had acquired an easement created by the public use of the street

and plaintiff was not entitled to damages from the City but was entitled to quiet his title subject to the easement over a portion of his property over which runs the street.

The petitioner appealed and the District Court of Appeal, Second Appellate District, held that the condemnation action of the City left the lien of the bond of petitioner's predecessor unimpaired, but that the City had acquired an easement by public use and since the petitioner did not file a claim with the City pursuant to its Charter, petitioner was not entitled to compensation.

Petitioner then filed a petition for hearing in the Supreme Court of the State of California and the cause was heard and determined. The decision in the Supreme Court of the State of California is reported in 47 Cal. 2d 852, as *Wilson v. Beville.*

The decision in the Supreme Court held that petitioner was not required to file a claim with the City; that the lien of petitioner's predecessor's bond was unimpaired by the condemnation action; that the City had an easement by reason of the public use; but that petitioner was entitled to be compensated for the part of his property thus taken by the City, under the doctrine of inverse condemnation. The cause was reversed to determine plaintiff's damages.

Thereafter, the cause was set for a judicial interpretation of *Wilson v. Beville,* 47 Cal. 2d 852, in the Superior Court, at which time the trial court determined as a matter of law, no evidence having been introduced nor permitted under the scope of the hearing, that petitioner was only entitled to be compensated for the amount of a predecessor's lien, even though such lien had been foreclosed and even though a treasurer's deed had issued to petitioner's immediate predecessor.

Petitioner appealed and a decision was rendered by the District Court of Appeal of the State of California on the second appeal, which decision is reported as *Wilson v. Beville*, at 175 A. C. A. 531.

Said District Court of Appeal of the State of California, affirmed the judgment of the trial court and the Supreme Court of the State of California refused to grant a hearing of petitioner's cause on January 20, 1960.

The said decision of the District Court of Appeal in 175 A. C. A. 531, effects a substantial change of the property law retroactively against the petitioner and denies the petitioner an equal application of existing laws, denies petitioner a jury trial, and deprives him of his property without due process of law.

Despite the fact that at all times and in all courts recited hereinabove, the petitioner cited and referred to Sections 6555 and 6571 of the Streets and Highways Code of the State of California, no court has yet seen fit to even comment as to why such sections were not given force and effect.

At all times during the above quoted lengthy litigation and throughout all proceedings, the petitioner wherever possible has cited and maintained that any act of the State Court which refused to give effect to petitioner's ownership of the property herein involved, and to compensate him therefor, violated the 14th Amendment to the United States Constitution.

The raising of the violation of the 14t Amendment to the United States Constitution by means of acts of the judiciary is suggested in the Petition for Rehearing in the District Court of Appeal of the State of California

and in the Petition for Hearing in the Supreme Court of the State of California, filed by the petitioner herein, specifically on page 9 of the Petition for Rehearing in the District Court of Appeal, and on page 22 of the Petition for Hearing in the Supreme Court.

## ARGUMENT.

The District Court of Appeal of the State of California has decided an important question arising under the 14th Amendment to the Constitution of the United States involving vested property rights, in conflict with the applicable decision of the Supreme Court of the United States in the following cases:

*Chicago, Burlington & Quincy R.R. Co. v. Chicago,* 166 U. S. 226;

*Brown v. Board of Education,* 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873;

*Aaron v. Cooper,* 358 U. S. 1, 78 S. Ct. 1401.

The District Court of Appeal of the State of California, through its action in affirming the judgment of the trial court after a reversal on appeal to determine the compensation to be paid petitioner, has deprived petitioner of his property without just compensation and without due process of law, in that the land owned by the petitioner and conveyed to petitioner by his predecessor was not at any time evaluated at its market value, nor was evidence taken concerning the market value, nor was evidence permitted within the scope of the trial resulting in the award to petitioner of his predecessor's lien.

The decision of the trial court on the amount of plaintiff's compensation was based on the value of a lien owned by plaintiff's predecessor in interest, even though

petitioner was never the owner of such lien and owned only the absolute title pursuant to issuance of a Treasurer's Deed to his predecessor and a deed from his predecessor to him.

It is urged that the failure of any California court of record to even mention Sections 6555 and 6571 of the Streets and Highways Code, let alone not to give force and effect to said statutes, constitutes not only a denial of equal protection of the laws and deprivation of petitioner's property without due process of law substantively, but also, in force and effect, denies petitioner a hearing, for all decisions herein of the Courts of the State of California have consistently refused to recognize the existence of said laws and have consistently turned a deaf ear to impassioned pleas on the part of petitioner for suggestions as to the reason for the failure to apply said laws to the facts in the within action. Certainly, the failure of California State Courts to enforce the lawful rights of a citizen thereof based on existing California statutes by *ignoring* the statutes, is parallel to the recent difficulties in connection with enforcement of racial integration in the schools in the southern part of the United States.

It is urged that the principle of equal application of the laws ought not to apply solely to racial integration, but should also apply to the failure in any instance of a State to give force and effect to the laws enacted, which failure to give force and effect to the laws results in a deprivation of property. The decision of the District Court of Appeal, reported in 175 Advance Cali-

fornia Appellate Reports, 531, stated, among other things, that on the prior appeal it was held that the assessment lien was not impaired by the condemnation action, and then concluded with a *non-sequitur*:

> "The trial court did not err in determining that the compensation due to plaintiff was the amount of the lien, $207.57, and interest thereon from April 13, 1951, when this action was commenced."

It is submitted that the foregoing completely ignores the fact that the "unimpaired lien" was foreclosed and a treasurer's deed issued to petitioner's predecessor in interest and that such treasurer's deed conveyed absolute title to the petitioner under the Streets and Highways Code, Section 6555.

Suppose a Southern State should enact a law which provided, in substance, as follows: "No teacher of any school supported by the Southern State X, shall fail to instruct any pupil or discriminate on tests against any pupil, or fail to give tests to any pupil because of his race or color," and despite that fact, a teacher made a practice of completely ignoring those of the Negro race who were members of the class and completely failed to give tests or reports of any kind on the aptitude or ability of the negro student and, the enforcement of such provision were sought in a court of law of Southern State X, and the courts of the Southern State X refused to acknowledge the existence of said law by comment in any way, would the principle be different than the one involved in the instant proceeding?

It is urged that it would not and that it is a manifest miscarriage of justice for the California courts to completely ignore existing California statutes vesting property rights in individuals and playing on words to accomplish an unjust result, the taking of petitioner's property without just compensation.

It is urged that the decision of the District Court of Appeal was not based on law or logic, but rather on emotion. Had the amount of the prior lien that had been foreclosed amounted to say $10,000.00, and the market value of the property taken been but $5,000.00, there is no doubt in petitioner's mind that the provisions of Sections 6555 and 6571 of the Streets and Highways Code would have been put in force and effect so that a determination of the market value of the land would have occurred.

In addition to the foregoing, the decision of the District Court of Appeal of the State of California has retroactively changed a rule of property law so as to deprive the petitioner herein of his property without due process of law, in that California law has always, prior to the second decision in *Wilson v. Beville,* 175 A. C. A. 531, followed the *quasi-in-rem* theory of Eminent Domain. (See, for example, *Wilson v. Beville,* 47 Cal. 2d 852; *Peckwith v. Lavezolla,* 50 Cal. App. 2d 211; *Lake Merced Water Co. v. Cowles,* 31 Cal. 315).

The decision of the District Court of Appeal (Appendix) applies the law of Missouri, an *in-rem* theory State, to a factual situation, which, applying a *quasi-in-rem* theory (California's prior law) accomplishes a different result.

In Missouri a condemnation action once commenced and prosecuted ordinarily eliminates any interest in land

a person might have and converts the interest in land to personal property, to wit, the condemnation award. (See: *St. Louis v. Beck*, 33 Mo. 1118, 63 S. W. 2d 814, 815.). So that the District of Appeal, in applying *Municipal Securities Corp. v. Kansas City*, 195 Mo. App. 464, to the factual situation in the within case, effectively changed the law of the State of California to that of an *in-rem* State, so far as condemnation is concerned. Although it is true that the said *Municipal Securities Corp. v. Kansas City* case, *supra*, was cited in *Wilson v. Beville*, 47 Cal. 2d 852, such case was cited for an illustration of the law in regard to priorities, but not in regard to the theory of condemnation actions.

## Conclusion.

Your petitioner respectfully submits that the writ of certiorari should issue to the end that this Court may review the decision of the District Court of Appeal of the State of California, Second Appellate District, Division 1, and determine whether that Court has deprived petitioner of his property without due process of law, and further determine whether or not the State of California has failed to give petitioner equal protection of the laws.

Respectfully submitted,

ROBERT J. McGOWAN,

*Attorney for Petitioner.*

## APPENDIX.

### Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

H. J. Wilson, Plaintiff and Appellant, vs. Charles Henry Beville, *et al.*, Defendants, The City of Los Angeles, a municipal corporation, Defendant and Respondent. Civil No. 23734.

Filed November 23, 1959.

Appeal from a judgment of the Superior Court of Los Angeles County. Otto J. Emme, Judge. Affirmed.

John B. Anson and John J. Guerin, for Appellant.

Roger Arnebergh, City Attorney, Bourke Jones, Assistant City Attorney, Ralph J. Eubank, Assistant City Attorney, Weldon L. Weber, Deputy City Attorney, for Respondent.

This is an action to quiet title to real property and for ejectment.

There was a prior appeal in this action. (Wilson v. Beville, 47 Cal. 2d 852 [306 P. 2d 789].) The present appeal is by plaintiff from the judgment (on the second trial) that plaintiff recover $207.57 and interest thereon.

Plaintiff's title to the property is based on a city treasurer's deed issued to his predecessor in interest pursuant to a foreclosure sale under a street improvement bond issued under the Improvement Act of 1911 (now Sts. & Hy. Code, secs. 5000-6794). The assessment resulting in the bond was in the amount of $207.57 and was recorded on November 23, 1927. On November 25, 1927, the city of Los Angeles commenced a condemnation action by which it sought an easement for street

purposes across part of the property. The owner of the assessment lien was not joined as a defendant in that action. On December 28, 1927, a bond representing the assessment was issued to the Municipal Bond Company. The holder of the bond was not made a defendant in the condemnation action. On July 23, 1931, final judgment of condemnation was entered in that action, and the record owner of the portion of the property condemned was awarded and paid $5,376.20. On January 22, 1932, the city took possession of the portion of the property condemned and has devoted it to public use as a city street since said date. Taxes have not been levied on that portion of the property since 1927.

On October 19, 1938, a treasurer's certificate of sale based on foreclosure of the bond was issued to Al Schuh. On March 8, 1950, Schuh assigned the certificate to Betty Wilson, and on August 23, 1950, a treasurer's deed was issued to her. On April 12, 1951, she executed a deed whereby she quitclaimed her interest in the property to plaintiff, and he commenced this action on the following day.

On the first trial, the judgment was that plaintiff was the owner of the property subject to an easement for a street, and that plaintiff take nothing by the action. On appeal by plaintiff from that judgment, the portion of the judgment that plaintiff was the owner of the property subject to the easement was affirmed, and the portion that plaintiff take nothing was reversed. (Wilson v. Beville, 47 Cal. 2d 852 [306 P. 2d 789].)

Prior to the second trial, a pre-trial conference order was made which stated that the only issue to be tried was the amount of compensation payable to plaintiff. Thereafter and prior to the second trial, the parties made

a written stipulation that the trial be limited to the proper construction of the decision on the prior appeal; and in the event a determination is made that (1) the plaintiff's damages are not a matter of arithmetical calculation, and (2) it is necessary to present evidence of the value of the property at a particular date, the trial shall be continued for at least a month and the issue as to the value of the property may be tried by a jury. After that stipulation was made, and prior to the trial date, the court made an order that "in the event of a determination of the legal issues which results in a conclusion that plaintiff's damages are not calculable by arithmetical determination, that the trial on the factual issues to determine the amount of damage to plaintiff shall be set for a jury trial. . . ."

The court found that, "construing the Opinion and Judgment" on the prior appeal, the "damages to be awarded plaintiff for the taking of a part of his interest in the property taken by defendant for public use as a street is a matter of arithmetical calculation, and by reason thereof" plaintiff should "have judgment in the amount of $207.57, the original assessment levied . . . with interest thereon at the rate of 7 per cent per annum from April 13, 1951." As conclusions of law, the trial court stated that the opinion on the prior appeal is construed, as follows: The damage payable to plaintiff is arithmetically calculable from the proper construction of the decision on the prior appeal. The date of taking plaintiff's interest in the property was January 22, 1932. The condemnation action, "setting forth the amount of damage to the property taken as $5,376.20," is not *res judicata* on the issue of plaintiff's damage herein.

The judgment was that plaintiff recover from defendant city the sum of $207.57 with interest thereon from April 13, 1951.

Appellant (plaintiff) contends that, under a proper construction of the decision on the prior appeal, the amount of his damage is not a matter of arithmetical calculation; but, on the contrary, he is entitled to have the amount of his damage determined by a jury. He asserts further that if, under a proper construction of that decision, the amount of his damage is a matter of arithmetical calculation, that amount is $5,336.20, which is the amount determined in the condemnation action to be the value of the property taken and damages to the remainder.

Respondent contends that the damages payable to appellant are calculable from the decision on the prior appeal, and that the trial court made a proper calculation. As above stated, the judgment of the trial court on the first trial was that plaintiff was the owner of the property subject to an easement for a street, and that plaintiff take nothing by the action. On appeal by plaintiff from that judgment, the portion of the judgment that plaintiff was the owner of the property subject to the easement was affirmed; but the portion of the judgment that defendant take nothing was reversed. The only issue at the second trial was the amount of compensation payable to plaintiff. As above shown, the parties stipulated that the second trial should be limited to the proper construction of the decision on the prior appeal, and to a determination as to whether the amount of plaintiff's damages was a matter of arithmetical calculation. The trial court determined that the amount of plaintiffs damage was a matter of arithmetical calculation, and that the amount was $207.57, which was the amount of the

original assessment, and that plaintiff was entitled to interest thereon from April 13, 1951; which was the date the action was commenced.

The court, on the prior appeal, said that the failure to join the lienholder in the 1927 condemnation proceeding left his lien unimpaired and, under the doctrine of inverse condemnation, plaintiff is entitled to compensation for the taking of his interest in the property. In the opinion on that appeal, condemnation cases were cited in which the holders of assessment or tax liens were not made defendants. In one of those cases, Municipal Securities Corp. v. Kansas City, 195 Mo. App. 464 [193 S. W. 880], it was said that "the city . . . is liable to the lienor in damages measured by the loss of the money which should have been applied in discharge of the lien." In another of those cases, Thibodo v. United States, 187 F. 2d 249, it was said: "When appellant has taken proper steps as just suggested [to amend his complaint to show that he has exhausted the state remedy or that state relief is not available, or that pursuit of state relief would be fruitless] he may then state his claim for relief based upon a deprivation of constitutional rights, by virtue of the 'taking' of his right to have his bonds discharged through foreclosure of the lien upon the land."

In the present case the notice of assessment was recorded two days before the condemnation action was commenced, and the city failed to name the lienholder a defendant in the action. If the lienholder had been so named, he would have been entitled to the amount of the lien, $207.57, and interest. When the city acquired the easement on part of the land in 1931, the lienholder's security for payment of the lien was diminished to the

extent that the easement decreased the value of the land which originally was security for payment of the lien. After 1927, taxes were not levied on the property which had been taken for the easement. When the lien was foreclosed it was a matter of public record that the easement was upon the property. About 20 years after the condemnation judgment in 1931, and about 13 years after the lien had been foreclosed, this present action was commenced wherein plaintiff sought an amount that was at least equal to the amount ($5,376.20) which had been paid to the owner of the property in 1932 after the property was condemned. As above stated, on the prior appeal it was held that the assessment lien was not impaired by the condemnation action. The trial court did not err in determining that the compensation due to plaintiff was the amount of the lien, $207.57, and interest thereon from April 13, 1951, when this action was commenced.

In view of the above conclusion, it is not necessary to determine other contentions on appeal.

The judgment is affirmed.

WOOD, *P. J.*

We concur:

FOURT, *J.*

LILLIE, *J.*